HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal No.147 of 2006

And

WAMP No.293 of 2006

Between:

Kasinath Rao Godse … Appellant

And

The Municipal Council, Sanga Reddy

Represented by its Commissioner,

Sanga Reddy, Medak District and others.

… Respondents

::JUDGMENT::

Counsel for the appellant: Sri Vedula Venkata Ramana

Counsel for Respondent No.1: Sri P. Radhakrishna

Counsel for Respondents No.2

and 3: Government Pleader for Municipal Administration

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March 22, 2006

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Per G.S. Singhvi, CJ

For many centuries, the Indian society had cherished two basic values of life, namely, 'Satya' and 'Ahimsa'. One of these values i.e., 'Satya' constituted an integral part of the judicial system at various levels in our country. In pre-independence era, the people used to feel proud to tell truth in the Court proceedings irrespective of the consequences. However, post-independence period has seen a dramatic devaluation of the ethics. The materialism has over-shadowed the old ethos and quest for personal gain is so immense that the people do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in court proceedings. In a substantial number of cases, the litigants resort to falsehood. A new creed of litigants has developed in the last 40 years, who do not have any respect for truth. They can go to any length to make false statements, misleading statements and suppress facts and documents with a view to persuade the Court to pass favourable orders. In order to meet this challenge, the Courts have evolved and will continue to evolve new mechanism to show doors to the litigants who do not come with clean hands. One of the rules laid down by the courts is that a litigant who touches the pure fountain of justice with tainted hands is not entitled to hearing on

the merits of the case.

In **Hari Narain v. Badri Das**, the Supreme Court upheld the objection raised on behalf of the respondents that the appellant was guilty of misstating the facts and revoked the leave by making the following observations:

> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Art.136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

In **Welcome Hotel and others v. State of Andhra Pradesh and others etc.,** the Supreme Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

In **G. Narayanaswamy Reddy and others v. Governor of Karnataka and another**, the Supreme Court declined relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act on account of interim stay order passed in a writ petition. While dismissing the special leave petition, the Court observed:

> "Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Art.136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief

must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

In **S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**, the Supreme Court held that where a preliminary decree was obtained by playing fraud on the Court in-as-much as a vital document was withheld in order to gain advantage on the other side, such party deserves to be thrown out at any stage of the litigation.

In **Nand Lal and others v. State of Jammu and Kashmir and another**, a learned Judge of Jammu and Kashmir High Court held that if a party does not disclose all the facts correctly and candidly, it is not entitled to be heard on the merits of the case. Some of the observations made by the learned Single Judge are reproduced below:

> "Where the petitioners under Art. 226 have not stated the relevant facts in the petition or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. And even if the petitioners have a good case on merits, the Court will be entitled to decline to go into the merits and dismiss their petition, because the conduct of the petitioners has been such as to mislead the Court."

Reference also deserves to be made to some of the English decisions on this subject. In **Rex v. Kensington**, Cozens Hardy M.R. made the following observations on the conduct of a party in an ex-parte application in the following words:

> "On an ex-parte application uberrima fides is required, and unless that can be established if there is anything like deception practiced on the Court, the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done."

Lord Scrutton L.J., said:

> "It has for many years the rule of the Court and one which it is of the greatest importance to maintain, that when any applicant comes to the Court to obtain relief on an ex-parte statement, he should make a full and fair disclosure of all the material facts, facts not law …

> … The applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

In **R v. Churchwardens of All Saints Wigan**, Lord Haterlay observed:

> "Upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it – matters connected with delay or possibly with the conduct of the parties."

In **Rex v. Garland**, it was held:

> "Where a process is ex debito justitiae, the Court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in bona fides."

We have prefaced disposal of the above noted writ appeal by noticing the well established proposition that the court will not help a litigant who does not come with clean hands because after hearing the counsel for the parties and perusing the records, we are convinced that the appeal deserves to be dismissed on merits and also on the ground that the appellant has not approached the Court with clean hands.

The appellant owned agricultural land measuring
Ac.5-65 cents comprised in Survey Numbers 283, 284 and 287 in Kalvakunta Village, Sanga Reddy, Medak District. With avowed object of converting the agricultural land into urban land, the appellant submitted an application to Municipal Council, Sanga Reddy to sanction layout. The Commissioner of Municipal Council, Sanga Reddy (hereinafter described as 'the Municipal Commissioner'), vide his letter No.TPS/35/87 dated 27.5.1987 forwarded the application to Director, Town and Country Planning (respondent No.3), who granted technical approval to the layout subject to the conditions specified in Annexure-I appended to letter dated 10.11.1989, which was sent to the Municipal Commissioner.

Although the petitioner has not placed on record copy of letter dated 10.11.1989 and accompanying documents, from the pleadings of the parties and documents placed before the learned Single Judge, it can be seen that respondent No.3 granted technical sanction to the layout subject to various conditions including

the one that the applicant (appellant herein) should provide amenities like roads, drainage, water supply etc. as required by Sections 184 and 185 of the Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act'). For ensuring compliance of these conditions, the appellant mortgaged plot Nos.53, 54, 55, 64, 65 and 66 in favour of Municipal Council, Sanga Reddy, but he did not undertake the development of the area by providing roads, drainage and water supply. Rather, in complete disregard of the conditions of sanction, the appellant carved out the plots and sold the same to private individuals. He also manipulated the elected body of the Municipal Council and got the mortgage redeemed. Not only this, he succeeded in getting evidence created to show that roads have been constructed and drainage laid.

After almost four years of the grant of technical sanction of layout and alienation of the land in the form of plots, albeit in complete violation of the conditions of the sanction, the appellant moved the Municipal Council No.1 for release of excess area measuring 1624.24 square yards equivalent to Ac. 0.0336 guntas or for payment of compensation in terms of Rule 10 of the Andhra Pradesh Municipalities (Layout) Rules, 1970 (for short 'the Rules'). After some correspondence between the municipal authorities and respondent No.3, the latter vide his letter dated 30-1-2004, called upon the Municipal Commissioner to inform whether the layout owner had provided roads, drains, water supply etc., and whether the roads and open space have been handed over to the Municipality; whether the plots were sold in the layout or not and whether any building permissions are issued by the Municipality in the layout. In his reply dated 5.5.2004, the Municipal Commissioner indicated that the appellant had not provided drains and water supply. On receipt of that communication, respondent No.3, vide his letter dated 11-8-2004, asked the Municipality to prepare estimate of the total cost of formation of roads, drainage, culverts, streetlights, water supply etc., in the layout area and issue notice to the appellant to pay the amount to the Municipality as a condition precedent for considering his request for release of compensation for the excess open space.

On coming to know of the aforementioned communication, the appellant filed writ petition under Article 226 of the Constitution of India and prayed for issuance of a mandamus to the respondents to pay a sum of Rs.9,82,520/- as the price of the

excess area measuring 1624.24 square yards. In the affidavit filed by him, the appellant pleaded that in terms of Rule 10 (2) of the Rules, he was entitled to return of the excess area or to be paid compensation in lieu of the said area. He averred that all the conditions of sanction accorded by respondent No.3 had been fulfilled and, therefore, the respondents are not entitled to withhold the compensation payable in lieu of utilisation of excess area.

In the counter-affidavit filed by the Municipal Commissioner, Sri L. Rajpal, it was averred that the writ petitioner (appellant herein) had not complied with the conditions of layout and sold the plots without undertaking the development works like laying of roads, drainage, water supply etc. In paragraph 7 of his affidavit, Sri Rajpal categorically averred that the writ petitioner did not form the roads and drainage, but only left open space for road and this was the reason why the Municipality was compelled to collect betterment charges from the individual plot owners.

In his separate affidavit, Sri V.R.Satish Chandra, the then Director, Town and Country Planning, Hyderabad gave a detailed account of various stages of the case commencing from the sanction of layout, violation of the conditions of sanction, levy of betterment charges on the individual plot owners. He also set out the reason why the petitioner's claim for award of compensation in lieu of the excess land was not entertained. Sri Satish Chandra referred to the provisions contained in Sections 184 to 186 of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act') and Rule 10 of the Layout Rules, 1970 and pleaded that the petitioner is not entitled to compensation because he failed to provide roads and other civic amenities in accordance with the conditions appended to the technical sanction of the layout.

The learned Single Judge referred to the factual matrix emerging from the pleadings of the parties, Rule 10 of the Rules and concluded that having failed to abide by the conditions set out in the communication vide which the layout was sanctioned, the writ petitioner is not entitled to compensation. In the opinion of the learned Single Judge, respondent No.3 was fully justified in calling upon the Municipal Commissioner to assess the total cost for formation of roads, drains, culverts, water supply etc., because the petitioner had not provided the basic amenities in terms of the provisions contained in Sections 184 to 186 of the Act. Sri Venkataramana invited our attention to the correspondence exchanged by the appellant with the Municipal Commissioner and between the Municipal Commissioner and respondent

No.3 to show that his client had provided basic amenities like roads, drainage etc. and argued that the learned Single Judge committed a serious error by not entertaining his prayer for award of compensation in lieu of the excess area. Learned counsel then referred to Rule 10 of the Layout Rules and argued that the appellant's entitlement to receive compensation cannot be disputed because the excess area had, in fact, been utilised by the Municipal Commissioner.

Sri P.Radhakrishna, learned counsel for respondent No.1 Municipality supported the order of the learned Single Judge and argued that the appellant is not entitled to any relief because he had not explained delay of almost 14 years in seeking intervention of the Court and also because he did not come to the Court with clean hands.

We have thoughtfully considered the respective arguments and are inclined to agree with Sri P.Radhakrishna that the appellant is guilty of highly contumacious conduct and, therefore, he is not entitled to relief under Article 226 of the Constitution of India.

Undisputedly, the appellant's challenge to payment of compensation was founded on the sanction of layout which entitled him to utilise the agricultural land for building purposes. It is also not in dispute that respondent No.3 had accorded technical sanction to the layout subject to the conditions specified in Annexure-I appended to letter dated 10.10.1989 sent to the Municipal Commissioner. However, with a view to keep the Court in dark about the nature of the conditions imposed by respondent No.3 in terms of Section 184 of the Act, the appellant deliberately refrained from producing copy of letter dated 10.11.1989. If he had produced that communication, the learned Single Judge could have easily come to the conclusion that the appellant had not fulfilled his statutory obligation in terms of Sections 184 and 185 of the Act and the contractual obligation enumerated in the letter of sanction. This conduct of the appellant disentitles him from seeking relief under Article 226 of the Constitution of India, which, as mentioned above, is an equitable relief.

De hors the aforementioned conclusion, we are convinced that the order under challenge does not suffer from any legal infirmity warranting interference by the Division Bench. At the cost of repetition, we consider it proper to observe that construction of roads and providing of water supply, drainage etc., constituted an integral part of the conditions which were required to be fulfilled by the appellant before the land could be alienated to third parties. This is also clearly borne out from the record that without complying the conditions attached to the sanction of layout

and fulfilling his statutory obligations, the appellant, in connivance with the functionaries of the Municipality, manipulated the creation of certain documents on the basis of which he could build a castle for laying claim for payment of compensation in lieu of the excess land. All this is evinced from the contradictory stand taken in letter dated 5.5.2004 sent by the Municipal Commissioner to respondent No.3 and paragraph 7 of the affidavit of Sri Rajgopal, the then Municipal Commissioner. In paragraph 1 of letter dated 5.5.2004, the Municipal Commissioner gave out that the land owner has provided roads in the layout but did not provide drains and water supply. However, in paragraph 7 of his affidavit, Shri Rajgopal categorically averred that the writ petitioner did not form the roads and drainages but only left the space for roads and this has necessitated collection of betterment charges from individual plot owners who applied for permission for construction. On his part, the appellant did not produce any evidence to show that he had formed roads, laid drainage and provided for water supply as per the requirement of Sections 184, 185 and 186 of the Act. Therefore, the conclusion recorded by the learned Single Judge that he had not complied with the conditions subject to which layout was released, cannot be faulted.

Sections 184 and 185 of the Act and Rule 10 of the Layout Rules, 1970 which have bearing on the appellant's case read as under:

> **"184. Owner's obligation to make a layout and to form a street or road when disposing of lands as building sites:**
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> (1) The owner of any agricultural land who intends to utilize or sell such land for building purposes shall pay to the council such conversion fee as may be fixed by the council, not being less than twenty-five paise and not more than one rupee per square metre:
>
> Provided that no such conversion fee shall be payable where an agricultural land belonging to charitable, religious or such other institutions as may be prescribed is intended to be utilised or sold for building purposes.
>
> (2) The owner of any land shall, before he utilises, sells, leases, or otherwise disposes of such land or any portion thereof, as sites for construction of buildings-
>
> (a) make a layout and form a street or road giving access to sites and connecting them with an existing public or private street except in the cases where the sites abut on an existing public or private street;

(b) set apart in the layout adequate area of land on such a scale as may be prescribed for a play-ground, a park, an educational institution or for any other public purpose.

(3) Unless the conditions specified in Clauses (a) and (b) of Sub-section (2) are satisfied, the owner shall not be entitled to utilize, sell, lease, or otherwise dispose of his land or any portion thereof for the construction of buildings.

(4) No permission for the construction of buildings in such land or portion thereof shall be granted unless

(i) the street or road as required in clause (a) of sub-section (2) is laid out and the condition required in clause (b) thereof is fulfilled;

(ii) all layouts indicating sub-divisions of land, however, small they are, are approved by the council;

(iii) to (v) xx xx xx xx xx xx xx xx

185. Making of a layout and forming of new private streets or road:

(1) Any person intending to make a layout and form a new private street or road shall send to the municipal office a written application with plans and sections showing the following particulars namely:-

(a) the intended level, direction and width of the street:

(b) the street alignment and the building line:

(c) the arrangements to be made for levelling, paving, metalling, flagging, channelling, sewering, draining, conserving, lighting the street, and the provision for water-supply mains; and

(d) the area set apart for public purposes under clause (b) of sub-section (2) of Section 184.

(e) a copy of the title deed of the land duly attested by a Gazetted Officer of the Government together with an urban land ceiling clearance certificate, or as the case may be an affidavit, referred to in Section 184.

(2) In addition to the particulars referred to in sub-section (1), such person shall-

(i) where there is conversion of agricultural land, enclose a certificate to the effect that conversion fees as required under sub-section (1) of Section 184 has been paid; and

(ii) for the purpose of fulfilling the obligations imposed under Section 184, deposit as security such amount, as may be prescribed, in the municipal treasury, or give as security in favour of the municipality and such extent of the land, and of such value, as may be prescribed, in the area covered by his layout.

(3) The Commissioner shall, within fifteen days from the date of its receipt in the municipal office, call for further particulars, where necessary or forward the same to the Director of Town Planning. Where further particulars are called for, they shall be furnished by the applicant within ten days from the date of receipt of the notice by him, and the Commissioner shall forward to the Director of Town Planning, the layout plan with full particulars within a period of fifteen days from the date of receipt of particulars from the applicant. The Director of Town Planning shall, within sixty days from the date of receipt of the layout plan in his office, forward his recommendations to the municipality. The council may, within sixty days from the date of receipt of the recommendation of the Director of Town Planning, sanction the layout having due regard to such recommendations and subject to such conditions as it may deem fit or refuse to sanction for reasons to be recorded in writing.

(4) Such sanction may be refused on any of the following grounds namely--

(i) if, in the opinion of the council, the proposed street or road is likely to disturb any arrangements made or to be made, for carrying out of any general scheme for the laying out of street or road either in the master plan or a detailed town planning scheme prepared therefor under the relevant law relating to the town planning for the time being in force;

(ii) if the proposed street or road in the layout does not conform to the provisions of the Act or the rules made thereunder;

(iii) if the proposed street or road is not so designed as to connect atleast at one end with a street which is already open; or

(iv) if adequate area has not been set apart for public purposes under clause (b) of sub-section (2) of Section 184,

(v) if a copy of the title deed of the land duly attested by a Gazetted Officer of the Government together with an urban land ceiling clearance certificate, or as the case may be, an affidavit referred to in Section 184 are not furnished as required under sub-section (1) thereof;

(5) No person shall make a layout and form any new private street or road without, or otherwise than in conformity with, the orders of the council. If further information is called for, no steps shall be taken to make a layout and form the street or road until orders are passed in that regard. Any application not disposed of within a period of one hundred

and fifty days from the date of receipt in the municipal office of the required particulars in respect of such application shall be deemed to have been sanctioned in accordance with the provisions of this Act.

Rule 10 of the Layout Rules, 1970:

"10(1): The area of land required to be set apart under Clause (b) of sub-section (2) of Section 184 shall not be less than 5% of the gross area covered by the layout with not more than 8 plots per gross Hectare over and above this for the increase of every two plots per gross hectare, the open spaces to be provided shall increase by one more per cent. (Such open space shall, however, limited to 10% a maximum, irrespective of the size of plots when minimum, extent and width safety as per sub-rule (1) of Rule 9).

(2) In case the area, for which a layout is sought for, falls in a Master Plan or in a Town Planning Scheme and for which a draft scheme is ready furnished by the Director of Town Planning or in a Sanctioned Town Planning Scheme or Master Plan, if a portion of his land falls in the area earmarked in such plan for a common public purpose in the interest of general development of that locality, the owner of such land shall transfer such percentage of the area of layout as prescribed in sub-rule (1) free of cost to the Municipality. In other cases, i.e., if the area so earmarked in the layout under reference are more than such percentage as prescribed in sub-rule (1), he shall also transfer the entire area so proposed to be reserved in the layout and he is entitled to receive compensation at the prevailing market rates from the Municipality for the part of his site which is in excess of the extent of land which he has to provide as per sub-rule (1)."

A conjoint reading of the provisions reproduced above makes it clear that the owner of any agricultural land who intends to utilize or sell such land for building purpose is duty bound to pay conversion fee and also form a street or road giving access to the sites and connecting them with an existing public or private street. He is also required to set apart adequate area of land, as may be prescribed, for a play-ground, a park, an educational institution or for any other public purpose. Sub-section (3) of Section 184 imposes an embargo on the utilization, sale etc., of the land by the owner unless the above noted conditions are satisfied. Sub-section (4) prohibits grant of permission for construction unless the conditions specified in Section 184(2) (a) and (b) are fulfilled. Section 185 of the Act reinforces the requirement of complying with the conditions enumerated in Section 184. It also contains the procedure to be followed for grant of sanction.

Since the appellant did not fulfill the conditions laid down in Section 184 read with Section 185 of the Act, he has no right to claim compensation in lieu of the excess area and respondent No.3 did not commit any illegality when he called upon the Municipality to give the estimates for formation of roads, drainages, water supply etc.

We are further of the view that the respondents will be fully justified on insisting on leaving out adequate area of land for play ground, park, educational institution and other public purposes and the appellant cannot claim compensation in respect of that land.

No other point has been argued.

For the reasons mentioned above, the appeal is dismissed.

As a sequel to the dismissal of the appeal, WAMP No.293 of 2006 is also dismissed.

Before parting with the case, we consider it our duty to direct Secretary, Municipal Administration to take cognizance of an apparently manipulative exercise undertaken by the elected representatives as well as the selected officers of Municipal Council, Sanga Reddy to relieve the appellant of his obligation in terms of Sections 184 and 185 of the Andhra Pradesh Municipalities Act, 1965 and the conditions which formed integral part of the sanction granted by respondent No.3 to the layout plan submitted by the appellant. It is expected that the concerned Secretary will get a detailed enquiry conducted through an officer not below the rank of Deputy Secretary, fix the responsibility of the defaulting officers and adequately punish him or her so that in future, other officers do not become party to such illegalities and apparently corrupt actions.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

March 22, 2006

svs/vtv/ars